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STATE OF SOUTH DAKOTA

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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IN THE MATTER OF THE COMPLAINT FILED  
BY MONTANA-DAKOTA UTILITY CO. AGAINST  
WESLEY JOHNSON REGARDING FAILURE TO  
PROVIDE NOTIFICATION OF PROPOSED  
EXCAVATION AS REQUIRED BY SDCL 49-7A-5  
AND A FAILURE TO PROPERLY EXPOSE A  
MARKED UNDERGROUND UTILITY LINE AS  
REQUIRED BY SDCL 49-7A-8

OC04-003

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Transcript of Proceedings  
September 15, 2004

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BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD,  
Rolayne Ailts Wiest, Attorney  
Kevin Kouba, Chairman  
Terry Larson, Member  
Steve Lehner, Member  
Todd Chambers, Member  
Gene Solseth, Member  
Pat Gilligan, Member  
Paul Lowe, Member  
Doug Larson, Member  
Jerry Schroeder, Member  
Ed Anderson, Member  
Larry Englerth, Executive Director

ORIGINAL

A P P E A R A N C E S

THOMAS M. FRITZ,  
LYNN, JACKSON, SHULTZ & LEBRUN,  
Attorneys at Law, P.O. Box 8250,  
Rapid City, South Dakota 57709-8250,  
appearing on behalf Montana-Dakota  
Utility Company;

WESLEY JOHNSON,  
appearing pro se.

Reported By Cheri McComsey Wittler, RPR

**PRECISION REPORTING**  
**L I M I T E D**

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SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

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appearing pro se.

Reported By Cheri McComsey Wittler, RPR

TRANSCRIPT OF PROCEEDINGS, held in the

above-entitled matter, at the Holiday Inn Express,  
Ft. Pierre, South Dakota, on the 15th day of September  
2004, commencing at 1:10 p.m.

=====

I N D E X

Witnesses	Dir	Cross	Redir	Recross
Jim Mann	6	18	--	--
Josh Sanders	20	26	--	--
Scott Erhart	33	35	38	--
Wesley Johnson	39	41	--	--

Exhibit Nos.	M	O	R
1 - Complaint	2	14	15
2 - Findings	2	16	17
3 - Acceptance by Jim Mann	2	16	17
4 - Rejection by Wesley Johnson	2	16	17
5 - Notice of Hearing with attached certified mail receipt	2	17	18
6 - Letter from One Call Board to Jim Mann and Wesley Johnson dated 6-2-04	2	16	16
7 - Notification of hearing from PUC	2	6	6

CHAIRMAN KOUBA: I'll begin the hearing for Docket OC04-003, In the matter of the Complaint filed by Montana-Dakota Utility Company against Wesley Johnson regarding failure to provide notification of proposed excavation as required by South Dakota Codified Law 49-7A-5 and a failure to properly expose a marked underground utility line as required by South Dakota Codified Law 49-7A-8.

The time is approximately 1:10 p.m. The date is September 15, 2004, and the location of the hearing is Conference Room A, Holiday Inn Express, Ft. Pierre, South Dakota.

I am Kevin Kouba, Chairman of the South Dakota One Call Board. Other Board members present are Jerry Schroeder; Golden West Telecommunications; Todd Chambers, City of Pierre; Steve Lehner, Northwestern Energy; Pat Gilligan, Brookings-Deuel Rural Water, Doug Larson, Northern Border Pipeline; Paul Lowe, Qwest; Gene Solseth, Hills Septic Service; Ed Anderson, South Dakota Rural Electric Association; Terry Larson, Heavy Constructors.

I am presiding over this hearing. This hearing was noticed pursuant to the Board's Notice of Hearing issued August 3, 2004. The issues at this hearing shall be: 1, Whether Johnson violated

SDCL 48-7A-5 by commencing excavation without providing advanced notification to the One Call center and, number 2, whether Johnson violated SDCL 49-7A-8 by failing to properly expose a marked underground utility line. Also at issue shall be whether penalties shall be imposed by the Board pursuant to SDCL 49-7A-18 and/or 49-7A-19, and if so, what those penalties shall be.

All parties have the right to be present and to be represented by an attorney. All persons so testifying will be sworn in and subject to cross-examination by the parties. The Board's final decision may be appealed by the parties to the State Circuit Court and State Supreme Court.

Rolayne Wiest will act as the Board's counsel. She may provide recommended rulings on procedural and evidentiary matters. The Board may overrule its counsel's preliminary rulings throughout the hearing. If not overruled, the preliminary rulings will become final rulings. I will now turn the hearing over to Ms. Wiest.

MS. AILTS WIEST: At this time I will take the appearances of the parties. Montana-Dakota Utilities.

MR. FRITZ: My name is Tom Fritz

5

1 from Rapid City, South Dakota and I'm counsel for  
2 Montana-Dakota Utilities and I have with me today  
3 Jim Mann and Josh Sanders from MDU.

4 MS. AILTS WIEST: And the record  
5 should reflect that Mr. Wesley Johnson has not  
6 appeared.

7 At this time I will ask Montana-Dakota, do you  
8 have an opening statement?

9 MR. FRITZ: I think the explanation  
10 for why we're here has been accurately stated.  
11 We're here pursuant to SDCL 49-7A-17 in the  
12 Complaint filed by Montana-Dakota Utilities by and  
13 through its engineer, Jim Mann, concerning  
14 Mr. Johnson's failure to notify One Call and also  
15 his failure to properly dig and expose a natural  
16 gas facility prior to the construction of a  
17 retaining wall.

18 I should say for the record that I would like  
19 to know that -- the record to reflect that  
20 Mr. Johnson was duly served a notice of this  
21 particular hearing in the Complaint and has  
22 apparently failed to appear for this hearing.

23 MS. AILTS WIEST: Thank you. You  
24 may call your first witness.

25 MR. FRITZ: We'd call Mr. Mann.

6

1 JIM MANN,  
2 called as a witness, being first duly sworn in the  
3 above cause, testified under oath as follows:

4 MR. FRITZ: Before we begin, just so  
5 the record is clear with regard to the notice  
6 situation, I'd offer Exhibit 7, which is the  
7 notification from the South Dakota Public Utilities  
8 Commission to Mr. Johnson of this particular  
9 hearing. I do that because apparently service was  
10 attempted by means of registered mail and he  
11 refused to accept it. So it was hand-delivered to  
12 him through Rapid Delivery.

13 MS. AILTS WIEST: Okay. Any  
14 objection? If not, Exhibit 7 is admitted.

15 DIRECT EXAMINATION

16 BY MR. FRITZ:

17 Q Mr. Mann, would you state your full name for the  
18 record.

19 A Jim Mann.

20 Q Where do you live, Jim?

21 A Rapid City, South Dakota.

22 Q What is your occupation?

23 A I am the region gas superintendent for Montana-Dakota  
24 Utilities.

25 Q And I'm going to show you what's marked as Exhibit 1.

7

1 I believe you have it in front of you there, but can  
2 you identify Exhibit 1 for us?

3 A Yes, I can. This is a Complaint that we filed against  
4 Wes Johnson.

5 Q And you filed it with who?

6 A South Dakota One Call.

7 Q And why did you file the Complaint with South Dakota  
8 One Call?

9 A We filed the Complaint because we were concerned with  
10 the excavation practices of Wes Johnson.

11 Q Have you had difficulty with Mr. Johnson in the past?

12 A Not that I'm aware of.

13 Q Okay. What happened in this particular situation that  
14 brought about the necessity to file this Complaint?

15 A What happened was we got a call on the 20th of January  
16 of this year. We had blowing gas on 7137 Prestwick in  
17 Rapid City, I believe it was. Our crews responded and  
18 found that Mr. Johnson had been excavating with a  
19 Bobcat skid steer loader. He had severed a 3/4-inch  
20 natural gas service line operating at 30 psi and then  
21 subsequently refused to pay the bill. And when he  
22 refused to pay the bill I contacted Mr. Johnson to see  
23 if there was a problem or why he wouldn't pay the bill,  
24 and at that time he felt that he had not done anything  
25 wrong. He told me that our line had been buried too

8

1 shallow and that it wasn't his fault that he hit the  
2 line and further investigation found that he had not  
3 called in for locates, nor had he hand dug and exposed  
4 a line when the line was clearly located from a  
5 previous third-party locator.

6 Q Now there isn't any question but that he hit your line.

7 A Correct.

8 Q And that he was excavating in the area?

9 A Yes, he was.

10 Q Now when you state that there was investigation done to  
11 determine whether or not there had been any  
12 notification to One Call or the One Call center before  
13 he began excavating, who conducted that investigation?

14 A I did.

15 Q Would you just tell the Board how you conducted that  
16 investigation and what you found?

17 A What I did was I called South Dakota One Call, Lynn  
18 Hirschberger at the One Call center and I asked her for  
19 the locate. I was informed at that time it would take  
20 a while to get it so I called our contract locators  
21 which at that time was One Call Locators which is now  
22 Elm Locators, asked them if they could produce a ticket  
23 for Mr. Johnson at this particular address. They  
24 searched through their records, said there was no  
25 record of a locate request.

1 We searched our own records. We keep copies  
2 of our locate tickets at our Montana-Dakota Utilities  
3 office. We had no record of it. And Mr. Johnson also  
4 pretty much indicated that he had no locate ticket when  
5 our crews arrived to repair the line.

6 **Q** When you indicate that Mr. Johnson pretty much has  
7 indicated, the last page of Exhibit 1 is a handwritten  
8 letter from Mr. Wesley Johnson of CreateAScape  
9 landscaping in Rapid City addressed to Dakota One Call  
10 Notification Board.

11 Have you seen this before?

12 **A** Yes, I have.

13 **Q** And that's Mr. Johnson's letter of May 21, 2004?

14 **A** Correct.

15 **Q** In that letter he indicates that this Complaint is  
16 nonsense and just read to the Board what the next  
17 sentence is, do you see that, "Locates"?

18 **A** Yes. "Locates were called in by the homeowner earlier  
19 that month."

20 **Q** Any indication from Mr. Johnson if in fact he made any  
21 calls or any notifications?

22 **A** No.

23 **Q** Have you had any other conversations with Mr. Johnson?

24 **A** No. I had the one telephone conversation with him  
25 during which he hung up on me. That's when I was

1 MS. AILTS WIEST: Can we stop for a  
2 moment. Are you Mr. Wesley Johnson?

3 MR. JOHNSON: Yeah. I'm sorry. I'm  
4 on mountain time. I just read that now. I'm  
5 sorry.

6 MS. AILTS WIEST: We have started  
7 with MDU's first witness and I would like to just  
8 take a moment and explain something to you. MDU  
9 will go first with their witnesses. And that's  
10 Mr. Fritz. That's their attorney. When they're  
11 done asking questions then you may ask any  
12 questions of the witness and after that the Board  
13 may ask questions of the witness and then when  
14 they're done with their witnesses then you may take  
15 the witness stand and make whatever statements that  
16 you would like to make.

17 Do you have any questions or anything?

18 MR. JOHNSON: (Witness shakes head)

19 MS. AILTS WIEST: And this is an  
20 exhibit that's been admitted that you received  
21 notification, and that's been admitted. And the  
22 other exhibit that has been marked is Exhibit 1,  
23 which is the Complaint. Okay.

24 MR. JOHNSON: Do I have copies of  
25 them?

1 concerned that these kind of excavation practices were  
2 going to continue.

3 **Q** Going back to Exhibit 1, did you fill this out?

4 **A** Exhibit 1 would be the Complaint?

5 **Q** Right.

6 **A** Yes, I did.

7 **Q** And is that your signature on page 1?

8 **A** Yes, it is.

9 **Q** There's also a narrative description of what has taken  
10 place here. Is that the information you provided to  
11 this Board?

12 **A** Yes, it is.

13 **Q** Would you explain for the Board what the attachments  
14 are to Exhibit 1? There is a report of damage. Is  
15 that an in-house --

16 **A** That's an in-house form we fill out when our property  
17 or our facilities are damaged. That's a damage report  
18 for this particular incident.

19 **Q** The next page is what is identified as Gas Leak and  
20 Repair Report, is, again, an in-house report?

21 **A** Again, that's a company form we use any time that we  
22 have a gas leak.

23 **Q** And there's another document called Parts Used?

24 **A** This is the actual service order that details the  
25 material we use to repair the line.

1 MS. AILTS WIEST: Do you have copies  
2 of any of this?

3 MR. JOHNSON: Just this.

4 MS. AILTS WIEST: Do you have extra  
5 copies of the Complaint? At this point if you  
6 could give him the Complaint.

7 (Mr. Englerth hands Mr. Johnson document)

8 MS. AILTS WIEST: Okay. You may  
9 continue.

10 MR. FRITZ: Thank you.

11 **Q** (BY MR. FRITZ) Attached to the Complaint is a document  
12 called Gas Service Order. Would you explain what that  
13 is, Mr. Mann?

14 **A** That is part of the material order that we just looked  
15 at. It's all part of one service order. This one  
16 details the labor and the equipment that was used to  
17 make the repair.

18 **Q** And then attached are two statements; is that right?

19 **A** Two statements from our crew that went out to repair  
20 the line.

21 **Q** One by Mr. Josh Sanders who is here?

22 **A** Correct.

23 **Q** And the other is by who?

24 **A** Bill Gifford, our foreman for the crew.

25 **Q** Now after the notification comes in that there's been a

13

1 hit to your line, what does MDU do?

2 **A** MDU sends a first responder. Many times that will be a

3 serviceman. This particular incident we sent a

4 construction crew out.

5 **Q** Okay. And was Mr. Sanders part of that crew?

6 **A** Yes, he was.

7 **Q** Did you ever go to the site yourself?

8 **A** No, I didn't.

9 **Q** And Mr. Sanders comes back and reports to you then?

10 **A** He reports to our construction supervisor who reports

11 to me.

12 **Q** Okay. And anyway, it's within your bailiwick or

13 jurisdiction at Montana-Dakota Utilities to file this

14 particular Complaint?

15 **A** Correct.

16 **Q** Did you investigate this for MDU then?

17 **A** Yes, I did.

18 **Q** And Mr. Sanders is here and will testify, but what did

19 your investigation reveal with regard to the violation

20 of SDCL 49-7A-8, which is the failure to hand dig at or

21 near the gas line?

22 **A** Our investigation revealed that the line was clearly

23 marked from a previously located request and

24 Mr. Johnson had gone in with a Bobcat and skid steer

25 loader without hand digging to expose the line to see

14

1 exactly where it was and in the process severed the

2 line.

3 **Q** Now for the Board you better explain -- you've

4 indicated that there was no request to locate at this

5 particular residence. Now you have indicated that the

6 line had in fact been marked by some previous locate?

7 **A** At some point, probably not too long prior to the

8 incident, it had been located because the marks were

9 still clearly evident. Mr. Johnson did not call in for

10 a locate, though.

11 **Q** And what did your investigation conclude again with

12 regard to the excavation?

13 **A** With regard to the excavation he did not hand dig and

14 expose the facility that was clearly marked.

15 **Q** At or near the site where it happened?

16 **A** Correct.

17 **MR. FRITZ:** We would offer Exhibit

18 1.

19 **MS. AILTS WIEST:** Is there any

20 objection to Exhibit 1, which is the Complaint?

21 **MR. JOHNSON:** Which is this?

22 **MS. AILTS WIEST:** Yes. It's the

23 entire Complaint.

24 **MR. JOHNSON:** Yeah. Well, my

25 problem is he's saying we didn't hand dig it and it

15

1 did say in here, too, that it wasn't located. But

2 the homeowner insisted he called in the locates.

3 So I had the homeowner call in the locates. That's

4 how the locates got marked. We didn't begin work

5 until after the locates were done.

6 **MS. AILTS WIEST:** Okay. And then,

7 Mr. Johnson, when it's your turn to be the witness

8 then you can put all of that evidence in on the

9 record.

10 **MR. JOHNSON:** Okay. Sorry about

11 that.

12 **MS. AILTS WIEST:** At this point do

13 you have any objection to just the Complaint coming

14 in? If not, the Complaint is admitted.

15 **Q** (BY MR. FRITZ) From your experience then, Jim, after

16 the Complaint is filed is there a probable cause

17 hearing held?

18 **A** Is there a probable cause --

19 **Q** Right. Were you aware of one?

20 **A** Yes. Yes, I am.

21 **Q** And did you receive notification in June from

22 South Dakota One Call Notification Board of their

23 conclusions regarding that?

24 **A** Yes, I did.

25 **Q** And is that Exhibit 6?

16

1 **A** Yes.

2 **MR. FRITZ:** We would offer Exhibit

3 6, which Mr. Johnson apparently received too.

4 **MS. AILTS WIEST:** Do you have any

5 objection to that coming in, Mr. Johnson?

6 **MR. JOHNSON:** (Shakes head.)

7 **MS. AILTS WIEST:** No objection.

8 It's admitted.

9 **Q** After the probable cause hearing, showing you what's

10 marked as Exhibits 2, 3, and 4, what are those,

11 Mr. Mann, as you understand it?

12 **A** The enforcement committee's action, Exhibit No. 2, was

13 their findings. Exhibit No. 3 is my acceptance to

14 OCO4-003B, part of the Complaint, and Exhibit 4 is my

15 acceptance of --

16 **Q** That's Mr. Johnson's?

17 **A** Okay. That's his rejection.

18 **Q** That's 4?

19 **A** Right.

20 **MR. FRITZ:** We'd offer 2, 3, and 4.

21 **MS. AILTS WIEST:** Do you have any

22 objection, Mr. Johnson? I think those are

23 documents you should have received.

24 **MR. JOHNSON:** What's this one?

25 **MR. FRITZ:** This is where Mr. Mann

17

1 accepts the recommendations and you reject.  
 2 MR. JOHNSON: Okay.  
 3 MR. FRITZ: Okay.  
 4 MS. AILTS WIEST: Any objection,  
 5 Mr. Johnson?  
 6 MR. JOHNSON: No.  
 7 MS. AILTS WIEST: Exhibits 2, 3, and  
 8 4 are admitted.  
 9 **Q** As a result of your acceptance on behalf of MDU and  
 10 Mr. Johnson's rejection was this matter set for  
 11 hearing?  
 12 **A** Yes, it was.  
 13 **Q** Showing you what's marked as Exhibit 5, do you  
 14 recognize that document?  
 15 **A** Yes, I do.  
 16 **Q** Is that the Notice of Hearing that you received?  
 17 **A** Yes, it is.  
 18 **Q** And attached to it is a certified mail to Mr. Johnson.  
 19 **A** Correct.  
 20 **Q** A receipt.  
 21 MR. FRITZ: We'd offer 5.  
 22 MS. AILTS WIEST: Any objection,  
 23 Mr. Johnson?  
 24 MR. JOHNSON: No.  
 25 MS. AILTS WIEST: No objection.

18

1 It's been admitted.  
 2 MR. FRITZ: That's all the questions  
 3 I have of Mr. Mann.  
 4 MS. AILTS WIEST: Mr. Johnson, do  
 5 you have any questions of Mr. Mann at this point?  
 6 CROSS-EXAMINATION  
 7 BY MR. JOHNSON:  
 8 **Q** Yeah. Why wasn't the gas line buried at all?  
 9 **A** The gas line was buried.  
 10 **Q** Okay. When I got to the job site there wasn't. So I'm  
 11 just wondering why when I got to the job site it  
 12 wasn't -- I mean, I could scrape it with my fingers and  
 13 get to the -- that's pretty dangerous for people,  
 14 right, or no?  
 15 **A** Our crews report something different.  
 16 **Q** Okay. My witnesses that were there when I hit the  
 17 line, they can tell you way different because it scared  
 18 the crap out of us when we did it.  
 19 MS. AILTS WIEST: At this point,  
 20 Mr. Johnson, if you could just ask the questions  
 21 because you will be allowed to put your evidence  
 22 in.  
 23 MR. JOHNSON: That's all the  
 24 questions I got. Actually, I got one more.  
 25 MS. AILTS WIEST: Go ahead.

19

1 **Q** (BY MR. JOHNSON) Do you have any regulations on how  
 2 deep they have to be at all?  
 3 **A** Yes, we do.  
 4 **Q** What is it?  
 5 **A** 12 inches.  
 6 **Q** Okay. And how do you know how deep the pipes were?  
 7 **A** We install the pipes at 12 inches. We have no control  
 8 over landscaping or other changes that occur  
 9 afterwards.  
 10 **Q** Okay. If the pipe isn't 12 inches deep, what do you  
 11 guys do about that?  
 12 **A** It is 12 inches deep. We do not put it in less than 12  
 13 inches deep.  
 14 MR. JOHNSON: Okay. That's all.  
 15 MS. AILTS WIEST: Do any members of  
 16 the Board have any questions of Mr. Mann?  
 17 If not, Mr. Fritz, do you have any redirect?  
 18 MR. FRITZ: I have none.  
 19 MS. AILTS WIEST: Thank you. Thank  
 20 you, Mr. Mann. You may call your next witness.  
 21 MR. FRITZ: Mr. Sanders.  
 22 JOSH SANDERS,  
 23 called as a witness, being first duly sworn in the  
 24 above cause, testified under oath as follows:  
 25

20

1 DIRECT EXAMINATION  
 2 BY MR. FRITZ:  
 3 **Q** Mr. Sanders, would you state your full name for the  
 4 record, please.  
 5 **A** Josh Sanders.  
 6 **Q** Josh, what is your occupation?  
 7 **A** I'm a gas fitter operator for Montana-Dakota Utilities.  
 8 **Q** You work out of Rapid City?  
 9 **A** Yes, I do.  
 10 **Q** Josh, attached to Exhibit 1 is a statement, I believe.  
 11 Is that your statement with your signature on the  
 12 bottom?  
 13 **A** Yes, it is.  
 14 **Q** So as a fitter operator in the employ of Montana-Dakota  
 15 Utilities company did you have some role in the  
 16 investigation of this matter?  
 17 **A** We were the first construction crew on site or the only  
 18 construction crew on site. We stopped the gas from  
 19 blowing and repaired the line and observed the scene  
 20 while we were there.  
 21 **Q** Would this have been on January 20, 2004?  
 22 **A** Yes.  
 23 **Q** And you were part of the crew. Who else was with you?  
 24 **A** My foreman, Billy Gifford, and there was two servicemen  
 25 there along with the Rapid City fire department.

1 Q And did you go to the residence of 7137 Prestwick Road?  
 2 A Yes, I did.  
 3 Q And you arrived in the afternoon or shortly after  
 4 lunch?  
 5 A Shortly after lunch.  
 6 Q And was the fire department already there?  
 7 A Yes, they were. They were on site.  
 8 Q Was there any other employees from MDU there?  
 9 A Ralph Shad and Kevin Bad Wound.  
 10 Q And did you go over and investigate or review, see the  
 11 site?  
 12 A The first thing we did was make sure the scene was  
 13 safe, make sure there was no possibility for somebody  
 14 to get hurt. The next step we did was to shut off the  
 15 blowing gas to stop the gas from releasing into the  
 16 atmosphere. And then after that we visited with  
 17 Mr. Johnson to see what had happened and what he was  
 18 doing there to have hit our line.  
 19 After that he stated that he was putting in a  
 20 retaining wall and was near the depth that he needed to  
 21 be. He needed another 6 to 8 inches and -- or needed  
 22 our line to be another 6 or 8 inches deeper than what  
 23 it was so in the process of repairing it we hand dug a  
 24 deeper trench, splicing a piece of pipe and backfilled  
 25 it.

1 Q Well, now when you got there then did you observe that  
 2 your gas line had, in fact, been hit?  
 3 A It definitely was. There was 3 or 4 feet sticking out  
 4 on the upstream side and another 2, 3 feet exposed on  
 5 the downstream side of the hit.  
 6 Q So was it actually cut in two?  
 7 A It was severed completely in two.  
 8 Q And the pipe was what, then sticking up?  
 9 A Yeah. It was sticking out of the bank probably I would  
 10 guess 8, 10 inches above where it looked like  
 11 Mr. Johnson had been leveling and then the rest of the  
 12 pipe was -- the downstream side was slightly depressed  
 13 into the ground and scraped over the top of.  
 14 Q And blowing gas is escaping from the pipe?  
 15 A Yes.  
 16 Q A dangerous situation, I assume?  
 17 A It is.  
 18 Q How do you stop the blowing gas?  
 19 A We have a squeeze-off tool. It was venting into the  
 20 air so we got as far away from the hole as we could on  
 21 the exposed pipe, put on a squeezer and squeezed off  
 22 the plastic pipe to stop the gas from blowing.  
 23 Q Now did you see Mr. Johnson there, the contractor?  
 24 A Yes, he was on site.  
 25 Q He was on site?

1 A Uh-huh.  
 2 Q Did you see any equipment that he may have been using  
 3 with regard to his excavation?  
 4 A There was a skid steer loader parked very close to the  
 5 site of the accident. It looked as though it had been  
 6 shut off right where he hit the line.  
 7 Q Just for the record, what is a skid steer loader?  
 8 A A Bobcat, skid steer loader, small tractor with a  
 9 loader on the front of it for digging dirt.  
 10 Q Definitely not a hand tool?  
 11 A No, sir.  
 12 Q Did you make any observations as to the excavation  
 13 itself? In other words, how deep was the hole and what  
 14 had --  
 15 A He was setting large cement retaining blocks that  
 16 are -- I don't know the exact dimensions on them but  
 17 they're fairly large. You can't handle them by hand.  
 18 He was leveling off a spot and making a small  
 19 excavation into the side hill to fit these blocks in  
 20 there.  
 21 The dirt line on the side of the foundation  
 22 of the home showed that there was probably 18 to 24  
 23 inches of dirt removed from the side hill. The blocks  
 24 were probably 2 feet across the bottom, maybe 18 inches  
 25 across the bottom and he was needing a flat spot to set

1 these along in front of the foundation of the house  
 2 along this hillside.  
 3 Q Did you have any conversations with Mr. Johnson?  
 4 A Yes. He was there while we were repairing. He had  
 5 mentioned that he thought that our line was awful  
 6 shallow and that he thought all gas lines were 5 feet  
 7 deep and surrounded with 2 feet of sand.  
 8 Q And what you observed was the line being approximately  
 9 2 feet deep?  
 10 A 18 inches to 2 feet.  
 11 Q Okay. Did you proceed then to repair the line?  
 12 A Yes.  
 13 Q And did the homeowner come out?  
 14 A Yes. The homeowner arrived after completion of the  
 15 repairs and my foreman was getting information from  
 16 the -- Mr. Johnson and the homeowner did arrive and  
 17 visit and wonder what was going on.  
 18 Q Did you observe any markings on the ground at all?  
 19 A Yes.  
 20 Q Around or near where the excavation was taking place?  
 21 A There was a yellow mark leading away from the riser and  
 22 meter set. It was -- I don't know how far exactly from  
 23 the riser it was but it was 3 feet or so from the riser  
 24 and probably 3, 4, 5 feet from where the hit had  
 25 occurred. It was a faint mark, an older mark, and the

1 rest of the site had been disturbed so I didn't see if  
 2 there was any other marks besides that one yellow mark  
 3 near the riser.  
 4 **Q** Was it obvious to you that Mr. Johnson, either from  
 5 your observation or else from the conversations you had  
 6 with him, that the pipe had been hit with this skidder,  
 7 this front-end loader?  
 8 **A** The scene sure showed that that was how it was hit.  
 9 The Bobcat was right there and Mr. Johnson also had  
 10 said that he had hit it with his skid steer while he  
 11 was digging out this dirt.  
 12 **Q** And the damage that was done to the pipe was such that  
 13 it was completely severed or --  
 14 **A** Completely severed.  
 15 **Q** And then you fixed the pipe and leave the scene?  
 16 **A** We fixed the pipe and in the process we had to lower it  
 17 just a little to --  
 18 **Q** Accommodate his wishes?  
 19 **A** Right. Yep.  
 20 **Q** Have you had anything else to do with this matter since  
 21 then?  
 22 **A** Just to write this statement and that was it.  
 23 MR. FRITZ: Thank you. That's all  
 24 the questions I have.  
 25 MS. ALTS WIEST: Mr. Johnson, do

1 you have any questions?  
 2 MR. JOHNSON: Yeah.  
 3 CROSS-EXAMINATION  
 4 BY MR. JOHNSON:  
 5 **Q** You say in your statement here it was 3 or 4 feet  
 6 downstream from the line where it was cut in two on  
 7 both sides. Wouldn't that mean the pipes were flailing  
 8 in the wind?  
 9 **A** Uh-huh.  
 10 **Q** They weren't, were they?  
 11 **A** The upstream side was, that's how we got our squeeze  
 12 around it, and the downstream side was exposed also.  
 13 **Q** Let me ask you this: You said you're about 3 foot off  
 14 the house. Okay. If the pipe was flailing 3 foot off  
 15 the house you would have had to dig all of that dirt.  
 16 Am I correct or not?  
 17 **A** No. It was exposed from -- somehow it was up in the  
 18 air from dirt being removed from it.  
 19 MR. JOHNSON: All right. He's  
 20 lying but whatever.  
 21 **Q** When you got there, okay, and you had to bury your pipe  
 22 4 foot so there's 8 foot of pipe sticking out of the  
 23 ground; is that correct?  
 24 **A** We fused in 3 feet of pipe, and there was approximately  
 25 2 feet or so on each end of it.

1 **Q** Okay. Your memory must not be right but it happened a  
 2 little bit ago. When you got there and you pulled up,  
 3 okay, what did you see from the road?  
 4 **A** From the road we walked over, had a look over the edge  
 5 of the hill. There was a fairly steep hill when I saw  
 6 over there. There was 3 or 4 feet of plastic pipe  
 7 exposed blowing gas and on the other side of that there  
 8 was 2 to 3 feet of gas line on the ground.  
 9 **Q** Okay. The meter, okay, was -- okay. When you're  
 10 looking at the house from the side, okay, where is the  
 11 meter?  
 12 **A** On the side of the house.  
 13 **Q** What side -- there's like a little indentation of the  
 14 house. It was over here. Okay. So if there was -- it  
 15 was like more than 4 foot away from the foundation from  
 16 where we split the pipe.  
 17 **A** Right.  
 18 **Q** Okay. If there was 4 feet of pipe sticking out or 3  
 19 feet like you say in your statement, it would have been  
 20 whacking against the house.  
 21 **A** (Witness shakes head)  
 22 **Q** You said just it was 3 foot --  
 23 MS. ALTS WIEST: You'll have to --  
 24 **A** I don't believe that, I mean, that's more than 3 feet  
 25 from your house.

1 **Q** You just said in your statement which you guys already  
 2 got in evidence 3 to 4 feet away from the house. And  
 3 that's contradicting what you said in your statement.  
 4 MR. JOHNSON: That's all I have.  
 5 MS. ALTS WIEST: Do the Board  
 6 members have any questions?  
 7 CHAIRMAN KOUBA: Just a couple of  
 8 clarifications. You mentioned there were markings.  
 9 Were those from -- they were from a previous  
 10 location or --  
 11 THE WITNESS: I would guess that's  
 12 what they were from. They were real faint and  
 13 barely visible.  
 14 CHAIRMAN KOUBA: But there wasn't  
 15 anything recent?  
 16 THE WITNESS: Not that I could see.  
 17 CHAIRMAN KOUBA: You mentioned  
 18 there was 18 inches to 24 inches of dirt line on  
 19 the house.  
 20 THE WITNESS: Right. The  
 21 foundation --  
 22 CHAIRMAN KOUBA: Right.  
 23 THE WITNESS: Dirt had been  
 24 removed. You could see the line on the cement  
 25 where dirt had been.



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1 CHAIRMAN KOUBA: So it had been  
2 removed at some point?  
3 THE WITNESS: Fairly recently. It  
4 was wet as in wet dirt against concrete.  
5 CHAIRMAN KOUBA: That's all I have.  
6 MS. AILTS WIEST: Any other  
7 questions?  
8 MR. LARSON: Yes, I had a couple of  
9 questions. How far away from the break of the line  
10 did you use the squeeze-on tool?  
11 THE WITNESS: As close to the side  
12 hill as we could so we were probably 3 feet from  
13 the break.  
14 MR. LARSON: So it was still  
15 exposed, you didn't have to hand dig to expose the  
16 tool?  
17 THE WITNESS: We didn't have to hand  
18 dig to expose, no.  
19 MR. ANDERSON: I have just one if I  
20 could. Based on your experience, if there was --  
21 say there was 4 feet exposed. Would a gas line of  
22 that type under -- I believe previous testimony  
23 said it operates under 30 psi. Would 30 psi under  
24 that much pressure, would that thing be flopping  
25 around?

30

1 THE WITNESS: The gas pipe is fairly  
2 stiff. I've never seen it flail around like that.  
3 I mean, I haven't seen a lot of long stretches of  
4 gas pipe exposed with 30 pounds blowing through  
5 them. They're always short stretches. But no,  
6 I've never seen gas pipe flail around.  
7 MR. TERRY LARSON: I have one  
8 question. From the meter to the paint mark to the  
9 cut line, is that a relatively straight line?  
10 THE WITNESS: It was starting around  
11 a curve. From the meter to the paint mark were in  
12 a straight line and then there was a small curve  
13 going up to the hill.  
14 MR. TERRY LARSON: So the line was  
15 cut not straight from the meter to the paint mark  
16 to the cut?  
17 THE WITNESS: No.  
18 MR. TERRY LARSON: There is a jog or  
19 something?  
20 THE WITNESS: It's starting to bend  
21 around the corner of the house.  
22 MR. TERRY LARSON: That's all I  
23 have.  
24 MR. SOLSETH: My question is how  
25 large an area had been excavated?

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1 THE WITNESS: It looked --  
2 MR. SOLSETH: Width-wise?  
3 THE WITNESS: 6 feet probably. The  
4 retaining wall blocks were, I suppose, 18 to 2 feet  
5 wide and the hill is sloping at a fairly steep  
6 slope and to fit those retaining walls in at the  
7 edge of the house it had to be leveled off for a  
8 fair distance. So I would guess 6 feet.  
9 MR. SOLSETH: When you got there was  
10 there pipe exposed because it had been probably  
11 torn out by the skid steer loader in your mind or  
12 had it been exposed and they were just working  
13 around it? I mean, if there was 6 feet, most skid  
14 steer loaders in my mind are around bucket width of  
15 no more than 50 inches is common I would say or  
16 maybe 60 inches, which would be 5 feet. So there  
17 hadn't been in your opinion -- he had hit it  
18 unknowingly?  
19 THE WITNESS: That would be my  
20 opinion, he had hit it unknowingly.  
21 MR. SOLSETH: He hadn't had it  
22 exposed and was just trying to peel a little off at  
23 the bucket?  
24 THE WITNESS: No, sir. It looked  
25 like he came in in line with it and skinned the top

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1 of it for 2 to 3 feet and then it started to climb  
2 up the embankment, severed it, and that left the 2  
3 to 3 feet on the upstream side of it.  
4 MR. SOLSETH: Thank you.  
5 MR. GILLIGAN: Just for  
6 clarification, were there any other contractors on  
7 site?  
8 THE WITNESS: No, sir.  
9 MS. AILTS WIEST: Any other  
10 questions from the Board members? I just had one  
11 question. I know in the Complaint it said that the  
12 marked line was still clearly visible and I think  
13 you said it was faint. How visible was that line,  
14 the markings?  
15 THE WITNESS: You didn't have to  
16 scour the ground to see it but you had to know what  
17 you were looking for to see it. You had to go  
18 looking for the yellow line to see it. It wasn't  
19 vivid yellow. It was dirt mixed in, you know. It  
20 was faint.  
21 MS. AILTS WIEST: Okay. Thank you.  
22 Any other questions?  
23 CHAIRMAN KOUBA: One question. And  
24 I don't know whether or not it's a relevant  
25 question but I'm going to ask it anyway. Did you

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1 go back in your investigation and look to see when  
 2 a previous locate would have been done there?  
 3 THE WITNESS: I did not.  
 4 CHAIRMAN KOUBA: Okay.  
 5 MS. AILTS WIEST: Any other  
 6 questions? Any redirect, Mr. Fritz?  
 7 MR. FRITZ: None.  
 8 MS. AILTS WIEST: Thank you. Do you  
 9 have any further witnesses, Mr. Fritz?  
 10 MR. FRITZ: We do not.  
 11 MS. AILTS WIEST: Mr. Johnson, do  
 12 you have any witnesses?  
 13 MR. JOHNSON: (Witness nods head)  
 14 MS. AILTS WIEST: Would you like to  
 15 call your first witness.  
 16 SCOTT ERHART,  
 17 called as a witness, being first duly sworn in the  
 18 above cause, testified under oath as follows:  
 19 MS. AILTS WIEST: At this point,  
 20 Mr. Johnson, you can ask the questions but please  
 21 have him state his name and address.  
 22 DIRECT EXAMINATION  
 23 BY MR. JOHNSON:  
 24 Q What is your name?  
 25 A Scott Erhart.

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1 Q Where do you live?  
 2 A I live on 14787 Quarterhorse Drive.  
 3 Q All right. When we were working that day, from your  
 4 recollection how deep were we digging?  
 5 A His bucket was no more than 2 inches in the ground that  
 6 I could see.  
 7 Q Okay. How big of an area were we excavating?  
 8 A On the length or width?  
 9 Q How big are the blocks we were using? About 4 feet?  
 10 A The blocks are roughly 3 foot by 2 foot wide or so.  
 11 Q 2 foot deep?  
 12 A Yeah.  
 13 Q All right. And after I hit the pipe what happened and  
 14 how much of the pipe did I pull out of the ground?  
 15 A The pipe was even, maybe a foot that you could see on  
 16 both sides. So it's like a 2-foot stretch right there  
 17 that you could see the pipe. And it was no more  
 18 than -- I mean, the pipe was barely able to be seen.  
 19 It was right on top. I mean, it may have had a little  
 20 pitch out of the ground on one side but they both  
 21 weren't ripped out of the ground 2 foot or 18 inches,  
 22 nothing like that.  
 23 Q Okay. After I hit it and I shut the machine off were  
 24 the pipes flailing in the air like Montana-Dakota was  
 25 trying to say?

35

1 A You could hear the gas but the pipe wasn't moving or  
 2 anything.  
 3 MR. JOHNSON: That's all the  
 4 questions I have.  
 5 MS. AILTS WIEST: Mr. Fritz?  
 6 CROSS-EXAMINATION  
 7 BY MR. FRITZ:  
 8 Q Mr. Erhart, you're an employee of Mr. Johnson's; is  
 9 that right?  
 10 A I was there that day.  
 11 Q As a friend or --  
 12 A Yeah.  
 13 Q -- as an employee?  
 14 A As a friend.  
 15 Q And what was your role in this? I mean, were you just  
 16 watching?  
 17 A I was just there. It was close to lunchtime. We were  
 18 going to go to lunch and I was just up there.  
 19 Q And Mr. Johnson, is he on this Bobcat --  
 20 A He was in the Bobcat, yes. He was skimming the surface  
 21 about 2 inches with the Bobcat.  
 22 Q And do you know what he was attempting to do? What  
 23 kind of work was he doing out there?  
 24 A He was putting in a brick retaining wall.  
 25 Q For this homeowner?

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1 A Yeah.  
 2 Q And you saw him hit the pipe?  
 3 A Yeah.  
 4 Q And did it actually sever the pipe?  
 5 A The pipe was severed.  
 6 Q As a result of being hit by this Bobcat?  
 7 A Yeah.  
 8 Q And when you say that he was just skimming the ground 2  
 9 inches with a Bobcat, what's the purpose of that? Do  
 10 you know? Do you know what he was attempting to do?  
 11 A Well, I would guess to make it level for the wall.  
 12 Q Okay. After he hits the pipe, then what happens?  
 13 A He turned the skid loader off, and he called the fire  
 14 department and MDU, I do believe.  
 15 Q And were you there when MDU came out?  
 16 A I was up the road away from the house.  
 17 Q Did you see the MDU crew come and investigate and fix  
 18 it?  
 19 A Yep.  
 20 Q Did you observe any excavation at or near the scene  
 21 prior to when you come for lunch that day?  
 22 A You mean as in the slopes of the yard or anything?  
 23 Q Right.  
 24 A Well, it did slope towards the back of the house. The  
 25 backyard did slope downhill.

1 Q And had Mr. Johnson done some excavating there prior to  
2 this?  
3 A It came down and the wall was --  
4 THE WITNESS: How tall was the wall?  
5 MS. AILTS WIEST: I'm sorry. You  
6 can't ask.  
7 A I'm not too sure how tall the wall was or how much was  
8 actually dug out but from when I was there that day he  
9 didn't dig any but just that 2 inches off the top.  
10 Q So when you're there that day before lunch he's just  
11 skimming 2 inches of dirt off the top of undisturbed  
12 ground?  
13 A Where the wall was going.  
14 Q Okay. The skimming that he was doing, was that  
15 undisturbed? Do you know what I mean by undisturbed?  
16 A I don't know what you mean.  
17 Q Did it appear that there had been some excavation prior  
18 to the incident when Mr. Johnson hit the pipe?  
19 A Possibly.  
20 MR. FRITZ: That's all the questions  
21 I have.  
22 MS. AILTS WIEST: Any questions from  
23 the Board members?  
24 MR. TERRY LARSON: That Prestwick's  
25 a new area out there, I believe. Was there grass

1 established, or was this all dirt grade?  
2 THE WITNESS: It was all dirt.  
3 MR. TERRY LARSON: That's all I got.  
4 MR. CHAMBERS: How long were you  
5 there prior to --  
6 THE WITNESS: Before he hit it, 45  
7 minutes, hour.  
8 MR. GILLIGAN: Did you see any  
9 utility markings when you were on the site?  
10 THE WITNESS: I didn't see any  
11 utility markings.  
12 MR. GILLIGAN: Was the homeowner on  
13 site?  
14 THE WITNESS: No.  
15 MS. AILTS WIEST: Any other  
16 questions from the Board? Did you have any further  
17 questions of your witness, Mr. Johnson?  
18 REDIRECT EXAMINATION  
19 BY MR. JOHNSON:  
20 Q All I wanted to ask him was, was that the first day I  
21 made it to the job? Was I there prior to that?  
22 A No. You wasn't there prior to that.  
23 MR. JOHNSON: No further questions.  
24 MS. AILTS WIEST: Any other  
25 questions?

1 MR. FRITZ: Nothing.  
2 MS. AILTS WIEST: If not, thank you.  
3 Mr. Johnson, were you going to testify?  
4 WESLEY JOHNSON,  
5 called as a witness, being first duly sworn in the  
6 above cause, testified under oath as follows:  
7 MS. AILTS WIEST: Could you state  
8 your name and address for the record?  
9 A Wesley Johnson, 1323 B Sidney Drive, Rapid City. This  
10 was one of my first jobs of the year putting in a brick  
11 retaining wall that was new. They were the big blocks  
12 with the nipples on top to hold them in place down the  
13 line. And they're huge. So he was trying to say the  
14 bricks were like this. I mean, they're 4 foot wide by  
15 3 foot deep by 2 foot high. So they're big brick.  
16 They weigh like 2,500 pounds.  
17 The ground was -- when I got there was  
18 relatively flat to what I needed to work with. I  
19 needed to scrape off a little bit of dirt and I mean  
20 little, like a half inch to 1 inch of dirt off one side  
21 and put it over on the other side to make it perfectly  
22 level and bring in pink rock to put in on top of that.  
23 Well, I got there, started to work, told my  
24 buddy I would be done in a few minutes because it  
25 wasn't going to take me long to do this. And I seen

1 the line there for the gas line but I figured since he  
2 was scraping a half inch of dirt or an inch because it  
3 was almost level that the pipe shouldn't be there which  
4 probably was my fault for doing that. But I started  
5 moving a little bit of dirt, moved it over and all of a  
6 sudden we heard this big like air escaping from the  
7 pipe. So immediately I backed the skid loader up, shut  
8 it off, jumped out, and I called the people, the fire  
9 department, Montana-Dakota. I called South Dakota One  
10 Call first, let them know what happened. They told me  
11 to call the fire department.  
12 So there were lines there and they were  
13 marked clearly. The guy had marked them three days  
14 prior to me coming out to do the work. They were just  
15 done the day before. I mean, it rained so they were --  
16 I mean, you could see them but you couldn't see them.  
17 There were flags everywhere where all the marks were.  
18 So they were clearly marked. It was clearly marked.  
19 So I knew the gas line was right there.  
20 But I didn't think it was going to be that  
21 close to the surface. And this guy, when he was trying  
22 to say that -- I can talk now about that or no?  
23 MS. AILTS WIEST: Go ahead.  
24 A Okay. When this guy showed up the pipe was sticking  
25 out of the ground I bet you about like this and it was

1 just sticking up like this blowing in the wind. It  
2 wasn't flapping, you know, 4 foot out of the ground  
3 like he was trying to say it was. It was just real  
4 little out of the ground like this. When we walked  
5 back down there to shut it off they dug from I bet you  
6 a 2 foot one way like into the hill about 2 foot maybe  
7 and to the right of the hill which was downhill from it  
8 they dug maybe a foot, okay?

9 They cinched that pipe together. They first  
10 left it apart like this so we could hand dig some dirt  
11 out of there because just a little bit needed to come  
12 out. Moved it and then they put their line right  
13 underneath my wall. Right now if we go out there and  
14 excavate it that line is right underneath the wall.  
15 Like my brick is sitting on their gas line, not buried  
16 at all. Like when you go out there right now it's  
17 still sitting there.

18 MS. AILTS WIEST: Anything else  
19 you'd like to add?

20 THE WITNESS: That's it.

21 MS. AILTS WIEST: Mr. Fritz?

22 MR. FRITZ: Thank you.

23 CROSS-EXAMINATION

24 BY MR. FRITZ:

25 Q Mr. Johnson, you're the owner and operator of

1 A Yeah. That's why I wasn't digging. Okay. I was  
2 pushing dirt, which is different than digging. My  
3 bucket would have to be on an inclined angle into the  
4 dirt to be digging. My bucket was straight across the  
5 top of the dirt just pushing dirt from one side where I  
6 was building the wall over to the other side to make it  
7 so the dirt would be level. So that's different than  
8 digging. I wasn't digging in the ground.

9 Q But if you had been digging in the ground, you knew you  
10 weren't supposed to be doing that with a Bobcat?

11 A If I was digging, yes. I know you're not supposed to  
12 dig. I already know this. That's a given.

13 Q All right. Now are you also aware of the fact that as  
14 a contractor, an excavator, you have an obligation to  
15 let One Call know if you're going to excavate?

16 A Correct.

17 Q You're familiar with the One Call law in this little  
18 booklet; is that right?

19 A Yeah. I have that same booklet.

20 Q You've got the same booklet. You keep it with you in  
21 your equipment or your office; isn't that right?

22 A Yeah.

23 Q I'm only saying that because she has a hard time  
24 getting your head nods. You have to answer orally.

25 A Yes.

1 CreateAScape landscaping?

2 A Yes, sir.

3 Q And I believe you testified and I think I heard you  
4 right that you knew the gas line was there where it  
5 was; is that right?

6 A Yes, sir.

7 Q And you knew that by some markings on the ground?

8 A And flags.

9 Q So you knew you were digging over a gas line?

10 A Correct.

11 Q And --

12 A Digging. I wasn't digging. I was skimming.

13 Q Skimming it with your Bobcat; right?

14 A Yes.

15 Q And --

16 A What I mean by skimming is I was moving the dirt that  
17 was on this side of the gas line and pushing it over to  
18 this side. So I wasn't digging. I was moving dirt to  
19 one side over to where the gas line was because it went  
20 like this and dropped down by the house. So I was  
21 trying to fill in that void of dirt that was missing  
22 there so I could get a flat surface to work on to put  
23 my wall up.

24 Q Are you aware you're not to be digging over a gas line  
25 with anything other than hand tools?

1 Q Okay. So you were aware of the One Call laws in  
2 South Dakota code regarding this situation?

3 A Okay. I didn't take the book and read it from start to  
4 finish. Most of it's common sense is what I figured.

5 Q Okay. But this didn't -- when you received the  
6 notification of the Complaint it didn't -- you knew  
7 what it was all about at least?

8 A What --

9 Q This hearing and the whole Complaint?

10 A No. I was dumbfounded when I first got it because I've  
11 never had a Complaint against me ever.

12 Q Attached to the Complaint is your letter of May 21,  
13 2004. You know what that is, don't you, the one you  
14 wrote and you write it to the One Call Board and you  
15 indicate that the Complaint is "nonsense;" right?

16 A Sure.

17 Q All right. And then you go on to state that the  
18 locates in this situation were called in by the  
19 homeowner earlier that month; is that right?

20 A Yep.

21 Q And who was that homeowner?

22 A I can't think of his name right now. I did work a long  
23 time ago for him.

24 Q At any rate, according to your answer to the Complaint,  
25 apparently you were not the individual that notified

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1 One Call?

2 A Correct. Because the homeowner insisted he call them.

3 So I said all right, you go ahead and call. I didn't

4 know I had to be the person that made the phone call.

5 Q And the homeowner told you he made the call or made the

6 locate?

7 A You could tell it was made. There was markings made

8 everywhere on the property. He told me exactly when he

9 called, when it was going to be expired, when they were

10 going to be done by, everything.

11 Q And now your job was to what, put this retaining wall

12 in?

13 A Yeah.

14 Q And why would you only remove about 1 inch of dirt if

15 you were going to put a retaining wall in?

16 A Okay. Why do you want to disturb it? The ground has

17 already been there for a while. That's why we don't

18 move dirt to recompact it to let it shift. That's

19 where you have a lot of problems in retaining walls

20 nowadays. This is my method. It works best. None of

21 my walls lean, none of my walls fall, nothing.

22 Q And you were skimming this 1 or 2 inches of dirt and

23 then all of a sudden the front end of your skidder

24 caught the pipe. Is that it?

25 A Caught on one corner, yeah.

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1 Q And actually pulled it out of the ground or broke it?

2 A No. Just snapped it right there. Pulled it out of the

3 ground 6 inches on both sides and about a foot and

4 that's all it.

5 Q And actually severed the pipe?

6 A Yep.

7 Q Okay. Were you there when Mr. Sanders came out?

8 A Yes.

9 Q Okay.

10 A The gentleman in the plaid (indicating) --

11 Q In the checkered shirt at the end of the table there.

12 You were there when he came out; right?

13 A Yes, sir.

14 Q Now can you tell me, sir, why you refused to accept

15 service of this hearing?

16 A What do you mean, refused to accept service?

17 Q Well, didn't registered mail come to you and you

18 refused to take it?

19 A Maybe. I don't believe so, though.

20 Q How did you get notice of this hearing?

21 A Some guy called me. I believe this gentleman right

22 here, Larry Black, if that's Larry Black.

23 Q Okay. Did you get something delivered to you by Rapid

24 Delivery?

25 A Yeah. I got that.

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1 Q Okay.

2 A It's sitting over there on the table.

3 Q Where did that go?

4 A That orange envelope right there.

5 MS. AILTS WIEST: Here's Exhibit 7.

6 MR. FRITZ: All right.

7 Q This is addressed to you, though, from the South Dakota

8 Public Utilities Commission that was delivered to you

9 by Rapid Delivery; is that right?

10 A Yes, sir. Got something that says that I refused

11 delivery or something?

12 Q Well, I guess the question to you is do you remember

13 ever signing for registered mail?

14 A Yeah. I sure do.

15 Q You did sign for it?

16 A Yeah.

17 Q Do you have any proof of that?

18 A No, not with me. At my house I'm sure I do. There's a

19 green something signed right there from -- I don't know

20 if it's me or somebody else.

21 Q Do you have any understanding as to why the One Call

22 Board or the Public Utilities Commission would go to

23 the extent of having Rapid Delivery hand deliver a

24 notice of this hearing to you?

25 A No. I have no clue. I got it the other day. I

48

1 thought it was a package from somebody but it was from

2 South Dakota One Call.

3 Q Okay. So that I understand your position in this

4 matter, you knew the gas line was below you, and it's

5 your position that however you were not digging very

6 deeply and so you didn't think it was a problem?

7 A I wasn't digging.

8 Q Or you were skimming?

9 A I wasn't even skimming. That's the problem you're not

10 getting. I was moving dirt from one spot of the hill,

11 okay, across the gas line to the other part on the

12 other side of the gas line, so that would mean I would

13 pick up some dirt over here and move it over here. So

14 the bucket was just -- just skimming across the top of

15 the ground. Not digging any dirt, just skimming across

16 the top moving dirt to the other side.

17 Q Are you telling the Board you could see the gas line

18 sitting in your bucket?

19 A I bet you you could have. As soon as that little bit

20 of dirt moved off the top of it you could, boom, see

21 the dirt right there.

22 MR. FRITZ: Thank you. That's all

23 the questions I have.

24 MS. AILTS WIEST: Did the Board

25 members have any questions?

1 MR. LEHNER: How long have you been  
2 in business?  
3 THE WITNESS: Five and a half years.  
4 MR. CHAMBERS: How high is the  
5 retaining wall you built in the area of the gas  
6 line or directly above, how high is the retaining  
7 wall?  
8 THE WITNESS: 3 brick tall, which is  
9 6 foot.  
10 MR. CHAMBERS: So on the backside of  
11 the retaining wall how deep is the gas line?  
12 THE WITNESS: 6 feet on the backside  
13 of it in the hill. Because I brought all new dirt  
14 in and put it over it. You know, because it went  
15 like this and the retaining wall went like this and  
16 we filled all of that up to there. Immediately  
17 right below the first brick -- or the second brick  
18 on the house, the gas line's right there. They  
19 didn't dig anything. They say they dig, they're  
20 burying, whatever. They don't ever bury anything  
21 out there, not even the electrical.  
22 That's why I came here to this whatever this  
23 is, hearing today, because you guys should know  
24 what people like this do out in the field. They  
25 don't bury anything. Every house that I've gone to

1 there's been a problem where there's been a hit  
2 line by some contractor or they hand exposed  
3 something and it was sitting just this much below  
4 the dirt, which is ridiculous (indicating). Kids  
5 go out there and play and grab the line or  
6 something and break it. It's irresponsible on  
7 MDU's part.  
8 MR. CHAMBERS: No further questions.  
9 MS. AILTS WIEST: Any other  
10 questions?  
11 MR. LARSON: Do you normally call  
12 One Call before doing a job?  
13 THE WITNESS: Every job. That's the  
14 only job I didn't call on because the homeowner  
15 insisted he called because he wanted to make sure  
16 it got done. He's DCI. I don't know why. He's a  
17 little different. He wanted to call. That's the  
18 only reason I didn't call on that job. Every other  
19 job before that I called.  
20 MR. LARSON: That's it. Thank you.  
21 MR. SOLSETH: Were you aware of the  
22 fact that it's your responsibility as a contractor  
23 or an excavator, in this case you're probably  
24 operating as an excavator, that you have to hand  
25 expose the line?

1 THE WITNESS: I am now.  
2 MR. SOLSETH: Prior to that time you  
3 were unaware of that?  
4 THE WITNESS: Prior to that time I  
5 knew if I put a sprinkler system in -- the only  
6 time I need locates is if I put a sprinkler system  
7 or fences. If there's a line going across where  
8 any sprinkler system's going to go, I hand dig that  
9 even before this happened 6 foot on both sides  
10 because I don't want to accidentally hit it because  
11 supposedly they may be a foot on both sides, maybe  
12 2 foot so I go up to 6 foot. They all dig 6 foot.  
13 I knew you're supposed to hand expose this  
14 stuff but maybe it's my miss fault or  
15 misunderstanding or whatever. I wasn't digging. I  
16 was moving dirt over. I mean, it had like a little  
17 spot that went like this by the wall and I was just  
18 moving some dirt over to this side and going to lay  
19 pink rock on top and put the wall and compact it.  
20 MR. SOLSETH: So how do you explain  
21 the MDU witness's deal that I believe he said that  
22 he thought dirt had been removed by the side of the  
23 house 18 to 24 inches?  
24 THE WITNESS: They're lying. That's  
25 all there is to it. They're lying just like they

1 said there was 4 foot.  
2 MR. SOLSETH: There was never any  
3 dirt removed on that side of the house?  
4 THE WITNESS: Not by me. None. I  
5 didn't move any dirt. I didn't move any. Just  
6 like they said there was 8 foot of pipe sticking  
7 out of the ground and it was flailing in the wind.  
8 It was a lie. It was not. They're lying.  
9 MR. SOLSETH: Thank you.  
10 MR. CHAMBERS: What time did you  
11 arrive on the site that day?  
12 THE WITNESS: I showed up there  
13 around 9:30, 10 o'clock, right around there. It  
14 was still a little bit wet. It rained like that  
15 week, all week like rained for three or four days  
16 and we couldn't work. So it was the first day back  
17 on the job. We showed up around 9:30, 10 o'clock.  
18 We did a little bit of hand digging behind the wall  
19 to move the dirt back because the skid wasn't going  
20 to fit just right in there, it was going to be on  
21 an angle, so we moved dirt back, leveled off and we  
22 needed a little dirt on the corner. That's when he  
23 pulled in and I was moving dirt over to go out to  
24 lunch and (indicating).  
25 MS. AILTS WIEST: Any other

53

1 questions from the Board?

2 MR. LARSON: When you say "we," was

3 that yourself and how many other folks then?

4 THE WITNESS: How many other people?

5 MR. LARSON: Yeah. Helping.

6 THE WITNESS: Me and this guy, we

7 were just going to lunch, and I had one other guy

8 with me.

9 MR. LARSON: Thank you.

10 MS. AILTS WIEST: Any further

11 questions? Is there anything further based on the

12 questions that you would like to add or clarify,

13 Mr. Johnson?

14 THE WITNESS: No. I just wanted to

15 let the Board know I don't feel I was in the wrong.

16 I wasn't digging. It states right in that book you

17 have to be digging to be at fault. But I wasn't

18 digging so if you guys can believe that or

19 whatever -- I mean, I know I wasn't digging.

20 MS. AILTS WIEST: Okay. Thank you.

21 Do you have any further witnesses, Mr. Johnson?

22 MR. JOHNSON: No.

23 MS. AILTS WIEST: Do you have any

24 rebuttal witnesses, Mr. Fritz?

25 MR. FRITZ: No.

54

1 MS. AILTS WIEST: Does either party

2 wish to make a closing statement? Mr. Fritz.

3 MR. FRITZ: On behalf of

4 Montana-Dakota Utilities Company I would submit

5 that we have presented sufficient evidence to

6 establish a violation of South Dakota Law and that

7 there has been a failure on the part of the

8 contractor to contact One Call, and secondly that

9 there has been a failure to hand dig over a natural

10 gas line even according to the own words of

11 Mr. Johnson.

12 I think it's incredible to call the serviceman

13 from Montana-Dakota Utilities Company a liar under

14 these circumstances since he has little or nothing

15 to gain from such a lie. He's merely come here

16 today to testify as to what he observed as to the

17 depth of the hole that was being dug by

18 Mr. Johnson.

19 And further it's my opinion that that which he

20 observed that day certainly constitutes excavation

21 as is defined by 49-7A-1 and which even goes to the

22 extent of calling scraping excavation.

23 So it's a little hard for me to imagine

24 someone moving an inch of dirt with a Bobcat

25 front-end loader and so I doubt that that is what

55

1 was taking place that particular day.

2 Further, I would point out that the One Call

3 booklet, which Mr. Johnson has, specifically states

4 that -- quote on page 18, "The depth of underground

5 facilities vary due to changing soil conditions and

6 other variables; therefore, excavators are

7 cautioned that facilities may be shallower or

8 deeper than expected or than applicable codes

9 require."

10 So even to assume that he has a legitimate

11 position in this matter, the situation is such in

12 my opinion that there just should not have been any

13 excavation, any skimming, any digging, any movement

14 of dirt above this gas line with a Bobcat. And

15 clearly our investigation shows that the homeowner

16 did not call for a locate and Mr. Johnson's own

17 words, he didn't ask for a locate and he certainly

18 was excavating a gas line. That's all I have.

19 MS. AILTS WIEST: Mr. Johnson, if

20 you'd like to make a closing statement just for --

21 MR. JOHNSON: Can I ask a question?

22 MS. AILTS WIEST: Go ahead.

23 MR. JOHNSON: Do you guys have any

24 evidence like he just said about there was no One

25 Call locate made? Where is that evidence? If he

56

1 can say that, where is the evidence?

2 MR. FRITZ: I don't think you were

3 here, Mr. Johnson, but Mr. Mann testified that he

4 called his locate and was never notified by One

5 Call to go out and check it.

6 MR. JOHNSON: Where were the

7 locates?

8 MR. FRITZ: So there was no locate

9 done in his investigation by One Call at all from

10 this residence in the immediate near future.

11 MR. JOHNSON: Okay. Well, there was

12 anyways. This guy over here in the suit, I don't

13 think he knows what dirt is. If he would have come

14 out there and looked at what happened and what we

15 did, okay, he might have been able to see what

16 happened and how much dirt was exposed.

17 The digging that was there, I told you earlier

18 when I was sitting there we scraped off a little

19 bit of dirt from behind the wall and brought the

20 dirt down to make it level because it went like

21 this. So scraped off some dirt and make it flat

22 and compact it. That's where the hand digging part

23 came in. We did hand dig but we didn't hand dig

24 the gas line because the gas line goes like this

25 and the walls come across it like this so the

1 line's vertical and the wall's horizontal across  
2 that property.

3 So I wasn't digging at all. All I did was  
4 grab some dirt just like I said and moved it over  
5 to the other side, okay. I don't know if anybody  
6 knows -- ever ran a skid loader before. All you do  
7 is just graze the top of the surface. That isn't  
8 considered digging. It says you have to be 1 to 2  
9 inches deep to be digging. I wasn't 1 to 2 inches  
10 deep. It was right across the surface, caught the  
11 top of the pipe. You can even see it before they  
12 fixed it, caught the top of the pipe and it  
13 snapped. I even hit it from the top, not the  
14 bottom. That's all I have to say.

15 MS. AILTS WIEST: Thank you. At  
16 this point I guess it's up to the Board. If any  
17 Board member would like to propose to make a bench  
18 decision by making a Motion, they can, or a member  
19 could ask that the Board take this under advisement  
20 which would mean that the Board would make its  
21 actual decision at a later time.

22 MR. ANDERSON: Mr. Chairman, I would  
23 enter a Motion that we take the evidence under  
24 advisement and go forward with the decision at some  
25 future date.

1 CHAIRMAN KOUBA: Motion's been made  
2 to take it under advisement and make a decision at  
3 a further date. Is there a second to that Motion?

4 MR. SCHROEDER: I second that.

5 CHAIRMAN KOUBA: The Motion has been  
6 made and seconded. Is there any further  
7 discussion?

8 Hearing none, all those in favor signify by  
9 saying aye.

10 (Various ayes)

11 CHAIRMAN KOUBA: Opposed, same sign.

12 MR. GILLIGAN: Aye.

13 MR. SOLSETH: Aye.

14 MS. AILTS WIEST: Okay. Based on  
15 that, I believe we'll adjourn the hearing for now  
16 and the parties will be notified at the time that  
17 the Board will make a vote on this decision. We  
18 would expect that this would just be done perhaps  
19 by telephonic hearing so you could just join by  
20 phone, the parties when we make the final decision.  
21 Following a final decision the Board will issue  
22 written Findings of Fact and Conclusions of Law.  
23 Any questions?

24 MR. JOHNSON: No.

25 MR. FRITZ: Thank you for your time.

1 STATE OF SOUTH DAKOTA )

2 :SS CERTIFICATE

3 COUNTY OF HUGHES )

4  
5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter and Notary Public in and for the  
7 State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 15th day of  
11 September 2004, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 21st day  
14 of October 2004.

15  
16  
17 

18 Cheri McComsey Wittler,  
19 Notary Public and  
20 Registered Professional Reporter  
21  
22  
23  
24  
25



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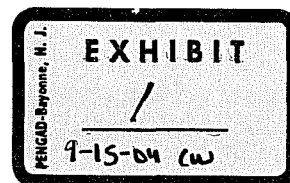
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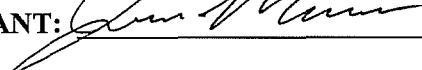
COMPLETE INFORMATION IS REQUIRED – ADDITIONAL PAGES MAY BE USED IF REQUIRED

### ALLEGATION OF PROBABLE VIOLATION(S) OF SOUTH DAKOTA ONE CALL LAWS

#### I. ACTION REQUESTED BY:

COMPLAINT FILED BY INDIVIDUAL ☐ OR BUSINESS\* ☒ PERSON FILING COMPLAINT: Jim Mann

COMPANY: Montana-Dakota Utilities Co. ADDRESS: PO Box 1060, Rapid City, SD 57709 PHONE NUMBER: 605-355-4021

SIGNATURE OF COMPLAINANT:  DATE: 4/16/04 EMAIL ADDRESS: jim.mann@mdu.com

\*If the complaint is filed on behalf of a Company, the person signing this form should have the proper authority to file the complaint.

#### II. ACTION REQUESTED AGAINST:

NAME OF EXCAVATOR/FACILITY OPERATOR: Wes Johnson - Create A Scape Landscaping PHONE NUMBER: 605-391-4141

ADDRESS: 1323B Sidney Dr, Rapid City, SD 57701

WAS A LOCATE REQUESTED FROM SD ONE CALL? YES ☐ NO ☒ LOCATE TICKET #: n/a

START DATE ON TICKET: n/a

DID EXCAVATOR WAIT UNTIL THE START DATE/TIME ON THE TICKET BEFORE COMMENCING EXCAVATION? YES ☐ NO ☐ N/A ☒

WERE BURIED FACILITIES EXPOSED BY HAND OR WITH NON-INVASIVE EQUIPMENT PRIOR TO EXCAVATION? YES ☐ NO ☒ N/A ☐

#### III. FACILITY INVOLVED (IF ANY)

TYPE OF FACILITY INVOLVED: Natural Gas Distribution OPERATOR OF FACILITY (IF KNOWN): Montana-Dakota Utilities Co.

OPERATOR ADDRESS: PO Box 1060, Rapid City, SD 57701 PHONE NUMBER: 605-355-4021

DEPTH OF COVER: 18 inches PRESSURE: 30 psig VOLTAGE: \_\_\_\_\_ NUMBER OF CABLE PAIRS: \_\_\_\_\_

#### IV. MARKING

WERE FACILITIES MARKED? YES ☒ NO ☐ N/A ☐

WAS THE MARKING COMPLETE PRIOR TO THE START TIME ON THE TICKET? YES ☐ NO ☐ N/A ☒

DID EXCAVATOR PRE-MARK WITH WHITE PAINT? YES ☐ NO ☐ N/A ☒

WAS THE FACILITY MARKED ACCURATELY (WITHIN 18 INCHES)? YES ☒ NO ☐ N/A ☐

DID EXCAVATOR USE REASONABLE CARE TO MAINTAIN LOCATE MARKS FOR LIFE OF PROJECT?  
YES ☐ NO ☒

HAVE YOU DISCUSSED THE PREVIOUS STATEMENTS WITH THE OTHER PARTY? YES ☒ NO ☐

IS THERE AGREEMENT? YES ☐ NO ☒ IF NO, PLEASE EXPLAIN: Mr. Johnson believes he is not at fault because the depth of the facility was not sufficient.

#### V. DAMAGE (IF ANY)

FATALITIES: 0 INJURIES: 0 LENGTH OF HOSPITALIZATION: n/a

ESTIMATED PROPERTY DAMAGE (\$): 140.00 NUMBER OF CUSTOMERS AFFECTED: 1  
DAMAGED IN: PUBLIC ☐ PRIVATE ☒ (RIGHT-OF-WAY)

PHOTOS OF THE DAMAGED FACILITY? YES ☐ NO ☒

ADDITIONAL INFORMATION: Attachments: Report of Damage to Company Owned Property, Gas Leak Repair Report, Gas Service Order, Witness statements from Josh Sanders and Bill Gifford

#### VI. PROBABLE VIOLATION

SPECIFIC STATUTE(S) OR RULE(S) THAT WAS VIOLATED: 49-7A-5, 49-7A-8

ADDRESS/LOCATION OF PROBABLE VIOLATION: 7137 Prestwick Rd, Rapid City, SD 57702

DATE/TIME OF PROBABLE VIOLATION: 1/20/04, 1:00 PM

HAVE YOU DISCUSSED THIS PROBABLE VIOLATION WITH THE PARTY THE ACTION IS FILED  
AGAINST: YES ☒ NO ☐

IF YES, NAME OF THE PARTY WITH WHOM YOU DISCUSSED THE PROBABLE VIOLATION: Wes Johnson

#### DESCRIPTION OF PROBABLE VIOLATION:

On January 20th of this year, Mr. Johnson was using a skid-steer loader to excavate an area for the installation of a retaining wall. He did not notify South Dakota One Call prior to the excavation as required by law. During the process of this excavation, he severed the 3/4" polyethylene service line to the above referenced address.

While no locate request was made prior to the excavation, the line had been marked by an earlier 3<sup>rd</sup> party request and was still clearly visible. No effort was made to hand-dig and expose the line prior to excavating with power equipment.

Wrecklessness while excavating near natural gas facilities not only causes service interruptions to our customers, it also constitutes an extreme safety hazard to the operator and the public.

After speaking with Mr. Johnson regarding this incident, he maintains that he did nothing wrong. We feel that he will continue his reckless excavation practices until the law is made clear to him. Montana-Dakota Utilities Co. requests that the board consider maximum penalties for these violations.

We feel that Mr. Johnson violated Statute 49-7A-5: Mr. Johnson failed to notify South Dakota One call before commencing excavation activities. We also feel he violated Statute 49-7A-8 by failing to hand-dig and expose the natural gas facility that was still clearly identifiable by an earlier 3<sup>rd</sup> party locate request.

## REPORT OF DAMAGE TO COMPANY-OWNED PROPERTY

(NOTE: Please refer to bottom of this form before proceeding with completion.)

### Part A

Owner of Property: \_\_\_\_\_ MDU Division/District: \_\_\_\_\_ Black Hills  
Date and Time of Loss: \_\_\_\_\_ ☐ AM ☒ PM 20 \_\_\_\_\_ Day of January \_\_\_\_\_ 2004  
Name of Location Where Damage Occurred: \_\_\_\_\_ Red rock  
Location of Damaged Property: \_\_\_\_\_ 7137 Prestwick \_\_\_\_\_ Rapid City \_\_\_\_\_ SD  
(Street) (City) (State)  
Rural Location: \_\_\_\_\_  
Estimated Amount of Loss: \_\_\_\_\_ Our Service Order No. (If applicable): \_\_\_\_\_  
Description and Cause of Loss or Damage: \_\_\_\_\_ contractor cut service line with Bobcat  
\_\_\_\_\_ While digging out for block wall

### Part B

Did Loss or Damage Originate on our Premises? ☐ Yes ☒ No If No, Explain \_\_\_\_\_  
If an Explosion, did a Fire Ensur? ☐ Yes ☒ No How was Fire Extinguished? \_\_\_\_\_  
If Electrical Property is Involved, Fill in the Following Supplemental Data:  
Type of Equipment Involved: \_\_\_\_\_  
Damage caused by Electrical Arcing, Short Circuit or Other Failure, Give Approximate Cause: \_\_\_\_\_  
Did Fire Ensur? ☐ Yes ☒ No

### Part C

If damage was caused by excavation, was location of our facilities requested prior to digging? ☒ Yes ☐ No  
Location requested by: Create A scape Landscaping Time: \_\_\_\_\_ Date: \_\_\_\_\_  
Company property located on: ☒ Private Property ☐ Public  
Damage notification by: Wes Johnson Time: 1:05 PM Date: 1/20/2004  
Was damager a subcontractor: ☐ Yes ☒ No If yes, for whom \_\_\_\_\_  
Address: \_\_\_\_\_ Telephone #: \_\_\_\_\_  
Name of equipment operator: Wes Address: 325 Foxrun Dr.  
Type of equipment: Bobcat Owner: \_\_\_\_\_  
Others involved in property damage: \_\_\_\_\_ Owner Address: \_\_\_\_\_  
Name: \_\_\_\_\_ Address: \_\_\_\_\_  
Name: \_\_\_\_\_ Address: \_\_\_\_\_  
In case of line break, complete the following: Size of hole: 3/4" Time line blew: 15 mins  
Names of Witnesses: \_\_\_\_\_ Address: \_\_\_\_\_  
Name of Insurer: \_\_\_\_\_ Address: \_\_\_\_\_

### Part D

Names of Persons Injured: \_\_\_\_\_ Address: \_\_\_\_\_ Extent of Injury: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_ Bill Gifford Signature: \_\_\_\_\_ Gary Higlin  
Date: 1/20/2004 Date: 1/21/2004

Send one copy to the Treasury Services Dept (GO) and one copy to Legal Dept (GO)

MONTANA-DAKOTA UTILITIES CO.  
**GAS LEAK AND REPAIR REPORT**  
(Or Pipeline Condition Report)

Reason For Report: ☐ Inspection ☒ Leak and Repair

Division: Black Hills Town: Rapid City 556 Date: 1/20/04  
If Leak, Date Detected: 1/20/2004 By Whom: Wes Johnson  
Leak Classification: ☒ Class I ☐ Class II ☐ Class III ☐ No Leak  
Date Leak Repair Person was Dispatched: 1/20/2004 Time: 1:05 PM  
Date Leak Repair Person Responded: 1/20/2004 Time: 1:20 P.M.  
From What Location (Town) did Leak Respond Person Leave: Shop  
Type of Line: ☐ Rural Service Line ☐ Distribution Main ☒ Service Line  
Location: Map Number 29 - 12 Block Number:          Lot Number:           
If Rural Service Line: Transmission Line Number:          Line Name:           
Survey Location:          Acct Number: 319712.02 On Federal Land: ☐ Yes ☒ No  
Describe Specific Location:         

Internal Pipe Condition: Not Applicable  
Pipe Size: ☒ 3/4-in ☐ Depth: 18" Length Exposed: 7'  
External Condition Good Coating Type Not Applicable  
Type of Pipe Plastic If steel is it cathodically protected: ☐ Yes ☒ No Pipe/Wire to Soil 1.10  
Soil Conditions: ☒ Gravel ☐ Sand ☐ Sil ☐ Clay ☐ Other Moisture ☐ Dry ☒ Damp ☐ Wet  
Original Installation Date:          Operating Pressure: M/P  
Kinds of Leak: ☐ Corrosion ☐ Material Defect ☐ Construction Defect ☒ Third Party ☐ Outside Force ☐ Other  
Description of Leak: Contractor dug into service with Bobcat cutting line in half

Method of Repair: squeeze off repair with socket couplings and pipe air test and soap test final fusion  
Date Repaired: 1/20/2004 S.O.:          Date of follow up (if required)           
If a DOT Reportable Leak: Date and Time of Telephone report:           
To whom was leak reported:           
Remarks: Line blew for 15 mins 3/4" hole. 2.5 mcf gas loss calculated with GASCalc by Ron Blum, 2-3-04.

Signed: Bill Gifford 1/20/04

Signed: Gary Higlin 1/21/04

Premise Number	319712.02				Town Number		556	
Street Address	7137 Prestwick dr.							
Date Completed	1/20/2004							
Batch Number	SL 534601							
Document Number	377526 II							
Service Property Units	12							
Stub Property Units								
Main Property Units								
Type of Work	Damage Repair		28929 OR 28879			ADDITIONAL NOTES:		
Parts Used PIPE PL .75 IPS		Part Number	Amount Used On Service	Amount Used On Stub / Main	Amount Used For Retirement			
		2051077	5					
COUPLING PL .75 IPS		2564068	2					
PIPE PL .75 IPS WIRE CU LOCATOR #14 HMWPE		2051077						
		2579007						
Size of Service:	Type of Service:	Length of Stub:	Size of Main:	Type of Main:	Depth of Service:	Depth of Stub:	Depth of Main:	Pipe / Wire to Soil:
3/4-in	<input checked="" type="radio"/> Plastic <input type="radio"/> Steel		N/A	<input type="radio"/> Plastic <input checked="" type="radio"/> Steel	18"			1.10 VOLTS
Tested By:	Length of Test:	Test Medium:	Pressure Tested To:	Welder / Fuser:	APPROVED BY:			
Billy Gifford	15	Air	100 PSIG	Billy Gifford	GARY HIGLIN			
Type of Coating	Condition of Coating		Internal Condition of Pipe		External Condition of Pipe			
Not Applicable	Not Applicable		Not Applicable		Good			

# GAS SERVICE ORDER

Premise Number: <b>319712.02</b>	Farm Tap: <input type="radio"/> Yes <input checked="" type="radio"/> No	Excess Flow Valve: <input type="radio"/> Yes <input checked="" type="radio"/> No
Originated by: <b>Bill Gifford</b>		
Date Ordered: <b>1/20/2004</b>		

REGION <b>Black Hills</b>	Service Address: <b>7137 Prestwick dr.</b>
	Cross Street:

County <b>Pennington</b>	Town <b>Rapid City</b>	State <b>South Dakota</b>	<input type="checkbox"/> Addition <input type="checkbox"/> Retirement <input checked="" type="checkbox"/> Other
Township: <b>1N</b>	Range <b>7E</b>	Section <b>29</b>	Block Lot
			City Limits <input checked="" type="radio"/> Inside <input type="radio"/> Outside

MDU Map Number <b>29 - 12</b>	Subdivision or Additional Map Sheets	Locate Ticket Number
----------------------------------	--------------------------------------	----------------------

Billable Work	Non-Billable Work			
<input type="radio"/> New Service Line <input type="radio"/> Relocate Service Line <input type="radio"/> Replace Service Line <input type="radio"/> Downstream Service (0380) <input checked="" type="radio"/> Damage Repair	<input type="radio"/> New Main/Stub <input type="radio"/> Retire Main/Stub/Service <input type="radio"/> Relocate Main/Stub <input type="radio"/> Replace Main/Stub/Service Complete <input type="radio"/> Leak or Non-Billable Damage			
<input checked="" type="radio"/> Time & Material <input type="radio"/> Per / Foot <input type="radio"/> Bid Price <input type="radio"/> T&M Not to Exceed	<input type="radio"/> Service Line Complete			
<table border="1" style="margin: auto;"> <tr><th>Price</th></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table>	Price			
Price				

SPECIAL INSTRUCTIONS:	<input checked="" type="radio"/> Bill In Full <input type="radio"/> 12 Monthly Payments
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**CONTRACTOR CUT SERVICE LINE WITH BOBCAT. BILLED ON INVOICE #326560.01**

WORK PREFORMED:	<b>Squeeze off service line / repair</b>
-----------------	--

Hours Worked								
Dates worked	Foreman		Welder		Fitter Operator		Laborer	
	Non-billable	Billable	Non-billable	Billable	Non-billable	Billable	Non-billable	Billable
1/20/2004		1.5				1.5		
Over Time								
Double Time								
Serviceman Time	Billable	Strait Time		Over Time		Double Time		
	Non-billable	Strait Time		Over Time		Double Time		

Date Job Completely Finished	1/20/2004	Crew Who Worked Job	<b>Billy Gifford</b>
------------------------------	-----------	---------------------	----------------------

CLASS #	Class 18 & 22 Welding Trucks	Class 16 & 12 Foreman & Serviceman Vehicles	Class 77 Welders	Class 59 Backhoes
EXAMPLE				
UNIT #	<b>5582</b>	<b>0</b>	<b>0</b>	<b>0</b>
Non-Billable				
Billable	<b>17</b>			
	MISCELLANEOUS	MISCELLANEOUS	MISCELLANEOUS	MISCELLANEOUS
UNIT#	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Non-Billable				
Billable				

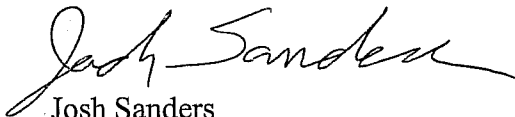
On Tuesday, January 20, 2004 Bill Gifford and I, Josh Sanders, were sent to a hit line at 7137 Prestwick Rd. We arrived around 1:20 pm. The Rapid City Fire Department, and two other Montana-Dakota Utilities Co. employees, Ralph Schad and Kevin Bad Wound, were already on site.

We found a 3/4" plastic natural gas service line cut in two. It was sticking three to four feet out of the side of a hill. There was another three or four feet exposed downstream from where the line was cut in two. The line had been located at sometime or another, because yellow paint was visible in the area of the line.

We stopped the blowing gas. While visiting with Wes Johnson, the contractor, he explained that he was excavating with a bobcat skid steer to install a new concrete block retaining wall. It looked to me that he had already removed eighteen to twenty-four inches of soil over the service line. He told us that he was at the right depth for his wall. We dug out next to the service line before making repairs to lower the service. We fused in two couplings and some pipe, and lowered the service approximately six to eight inches.

While talking to Wes he told us that he thought we were at fault because the service line was too shallow. He also said that every gas line he has seen was five feet deep with two feet of sand around it.

The home owner also came out to visit. He was wondering what the bill would be like and how the contractor would handle it. He commented how he thought the contractor was "fly by night".

A handwritten signature in black ink that reads "Josh Sanders". The signature is fluid and cursive, with the first name "Josh" and last name "Sanders" clearly distinguishable.

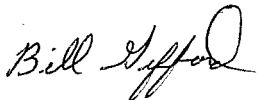
Josh Sanders  
Fitter-Operator  
Montana-Dakota Utilities Co.  
4/20/2004



4/20/2004

On January 20, 2004 we (Josh Sanders and I, Bill Gifford) were sent to a gas leak in the Red Rock Subdivision, located at 7137 Prestwick Road. When we arrived, at about 1:20PM the Fire Department was there and also two servicemen. There was a 3/4" P Service Line cut in two. After squeezing it off I asked Wes Johnson (bobcat operator) if he had gotten locates. He said he had, so I asked him for the ticket number, and he did not have one. There were some old locate marks. He said that the line was shallow. I told him we cannot guarantee the depth of our pipe after we install it, because we have no control over what dirt is removed or added after we leave a job. He said there was no sand over the gas line and I told him we do not sand our gas lines, that only the Power Company uses sand. The dirt stain marks on the concrete wall indicated he had removed about 18 inches of dirt. I asked him how much deeper he was going to dig, then we lowered the line 6-8 inches under the wall.

After the repairs I talked to the Homeowner about re-lighting his appliances. He wanted to know how much the repair was going to cost and if he had to pay the bill. After visiting with him he made the comment "that he was a "Fly by night" contractor."



Bill Gifford  
Working Foreman  
Montana Dakota Utilities

# CreateAScape Landscaping

1323 B Sydney Drive  
Rapid City SD 57701  
605-391-4141

May 21, 2004

Dakota One Call Notification Board

Dear Sir or Madam:

This letter is in response to a complaint made by MDU against CreateAScape Landscaping. I feel this complaint is nonsense. Locates were called by the home owner earlier that month. CreateAScape Landscaping came to install a retaining wall and removed about 1-2 inches of dirt and hit the gas line. I feel it was negligence on the builder's part that the line was not properly buried. The employees of MDU commented that they had never seen a gas line buried so shallow before and stated that they have no control over how deep the line is buried after they leave. This would be controlled by the builder. Please contact the builder and inquire why they would be so irresponsible when they bury the gas lines. I feel it was unacceptable.

Sincerely,



Wesley Johnson  
Owner of CreateAScape Landscaping

5/26/04 to Wesley —

DID CREATE-A-SCAPE have separate ticket? ~~YES~~ NO

WAS LINE marked on homeowner ticket? YES

WAS the line struck when hand digging a mesh caught? YES

WAS line marked accurately? YES

After discussion, Mr. Johnson claims he was not ~~accounting~~,  
he will have attorney respond by fax stating legal  
position NO later than 5 PM next Monday —



**ENFORCEMENT COMMITTEE ACTION**  
**OC04-003 (B)**



**Montana-Dakota Utilities vs. Wesley Johnson, dba Create-A-Scape Landscaping,**

**FINDINGS:**

**OC04-003 (B)**

**Alleged Violation of SDCL 49-7A-8 Location of underground facilities -- Marking**

Allegation is made by Montana-Dakota Utilities that Wesley Johnson, dba Create-A-Scape Landscaping, commenced excavation on January 20, 2004, in a manner that failed to maintain a minimum horizontal clearance of 18 inches between the marked underground facility and the cutting edge of the mechanical equipment.

The response received from Wesley Johnson, dba Create-A-Scape Landscaping, did not dispute the allegation that the damaged facility was marked under a third party locate request (homeowner) and that the markings were accurate. The response also did not deny the fact that the underground facility was damaged by bobcat skid steer equipment operated by Create-A-Scape Landscaping.

In reviewing the complaint filed by Montana-Dakota Utilities and the response from Wesley Johnson, dba Create-A-Scape Landscaping, the committee determined the following:

1. Wesley Johnson, dba Create-A-Scape Landscaping, had conducted excavation activity with bobcat skid steer equipment in the 18" tolerance zone that by statute is restricted to hand exposing or non-invasive (vacuum excavation) equipment.
2. Wesley Johnson, dba Create-A-Scape Landscaping, confirmed that they were aware that a previous locate request had been called in by the homeowner which is probably the source of the markings associated with this underground facility.
3. While the parties involved provide different information about the depth of the damaged facility, the depth of the underground facility is not a relative factor that would allow for an excavator to utilize mechanical equipment within 18" of either side of the marking without previously exposing the marked facility..

Based on the information noted above, the Committee found that there was probable cause that Wesley Johnson, dba Create-A-Scape Landscaping, had violated SDCL 49-7A-8 without providing advance notice to the South Dakota One Call System.

**ACCEPTANCE OR REJECTION BY PARTIES**  
**COMPLAINT OC04-003 (B)**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B), THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-003(B).

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B). THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON JUNE 18, 2004.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
1012 N. SYCAMORE AVENUE  
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

**OC04-003 (B)**

**VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION**

**I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(B) VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION.**

---

Signature

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(B) VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-003(B).**

---

Signature

## **RECOMMENDATION**

**OC04-003 (B)**

### **VIOLATION OF SOUTH DAKOTA SDCL 49-7A-8:**

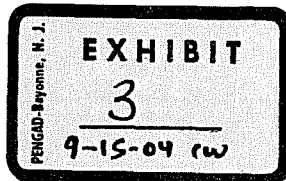
The Committee found that Wesley Johnson, dba Create-A-Scape Landscaping, had violated SDCL 49-7A-8 by failing to properly expose a marked underground utility line.

### **PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:**

The committee recommends a penalty of one thousand dollars (\$1000.00) with four hundred dollars (\$400.00) suspended on the basis that Wesley Johnson, dba Create-A-Scape Landscaping, fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-003 (B).

### **COMMENTS:**

The committee would recommend that Wesley Johnson, dba Create-A-Scape Landscaping, thoroughly review the Operations Manual for Facility Operators and Excavators that was enclosed with the complaint documents. The committee considers the action taken by Create-A-Scape Landscaping to be a serious violation of the SDCL 49-7A and puts the employees of Create-A-Scape Landscaping and the general public in an extremely unsafe position. This action would also constitute a violation of OSHA practices.



**ACCEPTANCE OR REJECTION BY PARTIES**  
**COMPLAINT OC04-003 (B)**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B).

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TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON JUNE 18, 2004.

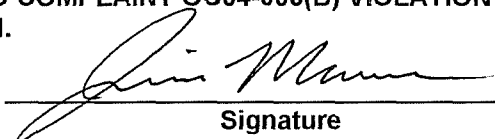
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
1012 N. SYCAMORE AVENUE  
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

**OC04-003 (B)**

VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION

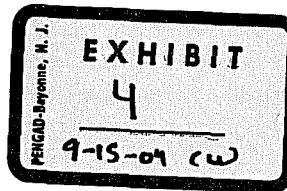
I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(B) VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION.

 6/8/04  
\_\_\_\_\_  
Signature  
Montana-Dakota Utilities Company

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(B) VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-003(B).

\_\_\_\_\_  
Signature  
Montana-Dakota Utilities Company

**ACCEPTANCE OR REJECTION BY PARTIES**  
**COMPLAINT OC04-003 (B)**



THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B), THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-003(B).

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-003(B). THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON JUNE 18, 2004.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
1012 N. SYCAMORE AVENUE  
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

**OC04-003 (B)**

**VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION**

**I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(B) VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION.**

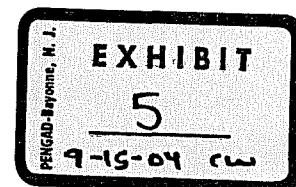
\_\_\_\_\_  
Signature

Wesley Johnson, dba Create-A-Scape Landscaping

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-003(B) VIOLATION OF SDCL 49-7A-8 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-003(B).**

\_\_\_\_\_  
Signature

Wesley Johnson, dba Create-A-Scape Landscaping



## BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT FILED )	NOTICE OF HEARING
BY MONTANA-DAKOTA UTILITY CO. )	
AGAINST WESLEY JOHNSON REGARDING )	OC04-003
FAILURE TO PROVIDE NOTIFICATION OF )	
PROPOSED EXCAVATION AS REQUIRED BY )	
SDCL 49-7A-5 AND A FAILURE TO )	
PROPERLY EXPOSE A MARKED )	
UNDERGROUND UTILITY LINE AS REQUIRED )	
BY SDCL 49-7A-8	

On April 16, 2004, pursuant to SDCL 49-7A-17, the South Dakota One Call Board (Board) received a complaint filed by Montana-Dakota Utilities Co. of Rapid City, South Dakota (MDU), against Wesley Johnson, the owner of CreateAScape Landscaping, Rapid City, South Dakota (Johnson). According to the complaint, Johnson severed a natural gas distribution pipeline owned by MDU while excavating. The complaint alleged that Johnson: 1) failed to notify the one-call center before excavating in violation of SDCL 49-7A-5 and 2) failed to hand-dig and expose the natural gas facility in violation of SDCL 49-7A-8.

Pursuant to SDCL 49-7A-23 and 49-7A-24, a copy of the complaint was forwarded to Johnson via certified mail sent on April 27, 2004, advising him that he must file an answer in writing by May 21, 2004. Return receipt indicates that Johnson signed for the notice on April 29, 2004. On May 26, 2004, an answer was filed by Johnson. Pursuant to SDCL 49-7A-22, a five member panel (Panel) was appointed by Kevin Kouba, Chairman of the Board, for the purpose of determining whether there was probable cause to believe there had been a violation of any statute or rule of the Board. The Panel met on June 2, 2004. Pursuant to SDCL 49-7A-25, based on the complaint filed by MDU and the answer filed by Johnson, the Panel determined by unanimous vote that there had been violations of the statutes as alleged in the complaint.

With regard to the alleged violation of SDCL 49-7A-5, the Panel found that there was probable cause to conclude that Johnson had violated SDCL 49-7A-5 by commencing excavation without providing the required notice to the South Dakota One Call System. Pursuant to SDCL 49-7A-18 and 49-7A-26, the Panel recommended a penalty of five hundred dollars (\$500.00) with three hundred dollars (\$300.00) suspended on the basis that Johnson fully comply with SDCL Chapter 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-003(A). With regard to the alleged violation of SDCL 49-7A-8, the Panel found that there was probable cause to conclude that Johnson had violated SDCL 49-7A-8 by failing to properly expose a marked underground utility line. Pursuant to SDCL 49-7A-18 and 49-7A-26, the Panel recommended a penalty of one thousand dollars (\$1000.00) with four hundred dollars (\$400.00) suspended on the basis that Johnson fully comply with SDCL Chapter 49-7A



and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-003(B).

Pursuant to SDCL 49-7A-27, a copy of the Panel's recommendations was sent to the parties. On June 8, 2004, the Board received an acceptance of the Panel's recommendations from MDU. On June 23, 2004, the Board received a rejection of the Panel's recommendations and a request for a hearing from Johnson.

The Board finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-7A, including 49-7A-2, 49-7A-4, 49-7A-5, 49-7A-8, 49-7A-10, 49-7A-12, 49-7A-17 through 49-7A-27, inclusive, and SDCL Chapter 1-26.

A hearing shall be held on September 15, 2004, at 1:00 p.m. (CDT) in Conference Room A at the Holiday Inn Express located at 110 East Stanley in Fort Pierre, SD. All persons testifying will be subject to cross-examination by the parties.

The issues at the hearing shall be: 1) whether Johnson violated SDCL 48-7A-5 by commencing excavation without providing advance notification to the one-call center; and 2) whether Johnson violated SDCL 49-7A-8 by failing to properly expose a marked underground utility line. Also at issue shall be whether penalties shall be imposed by the Board pursuant to SDCL 49-7A-18 and/or 49-7A-19, and, if so, what those penalties shall be.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Board will consider all evidence and testimony that was presented at the hearing. The Board will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Board shall determine whether Johnson, the owner of CreateAScape Landscaping, violated any statute or rule of the Board, and, if so, whether any penalties shall be imposed.

The Board's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please call 1-800-781-7474 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 13<sup>th</sup> day of August, 2004.

Rolayne Ailts Wiest

Rolayne Ailts Wiest  
Attorney for the One Call Board  
500 East Capitol  
Pierre, SD 57501  
Telephone (605) 773-3201

### CERTIFICATE OF SERVICE

I hereby certify that copies of Notice of Hearing were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 13<sup>th</sup> day of August, 2004.

Mr. Jim Mann  
Montana-Dakota Utilities Co.  
P.O. Box 1060  
Rapid City, SD 57709-1060

Mr. Wesley Johnson  
CreateAScape Landscaping  
1323B Sydney Drive  
Rapid City, SD 57701

Mr. Thomas G. Fritz  
Attorney at Law  
Lynn, Jackson, Shultz & Lebrun, P.C.  
P. O. Box 8250  
Rapid City, SD 57709-8250

Rolayne Ailts Wiest

Rolayne Ailts Wiest  
Attorney for the One Call Board

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U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To: <u>Mr. Wesley Johnson</u>	
Street, Apt. No., or PO Box No. <u>CreateAScape Landscaping</u>	
City, State, ZIP+4 <u>1323B Sydney Drive</u>	
<u>Rapid City, SD 57701</u>	
PS Form 3800, June 2002	
See Reverse for Instructions	



## South Dakota One Call Notification Board

Larry Englerth  
Executive Director

1012 North Sycamore Ave.  
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529  
Email: [exedir@sdonecall.com](mailto:exedir@sdonecall.com)

June 2, 2004

Jim Mann  
Montana-Dakota Utilities Co.  
P. O. Box 1060  
Rapid City, SD 57701

Wes Johnson dba  
Create-A-Scape Landscaping  
1323B Sidney Drive  
Rapid City, SD 57701

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on June 2, 2004, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC04-003 (A) and Complaint OC04-003 (B) filed by Montana-Dakota Utilities Company against Wesley Johnson, dba Create-A-Scape Landscaping.

By a unanimous vote of the Enforcement Committee, the recommended resolutions to the alleged violations included in this complaint were determined to be as follows:

### **Complaint OC04-003 (A)**

#### **Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation**

The Enforcement Committee found that there was probable cause that Wesley Johnson, dba Create-A-Scape Landscaping, had violated SDCL 49-7A-5 by commencing without providing advance notification to the South Dakota One Call System.

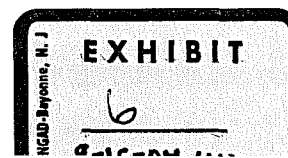
The committee recommends a penalty of five-hundred dollars (\$500.00) with three-hundred dollars (\$300.00) suspended on the basis that Wesley Johnson, dba Create-A-Scape Landscaping, fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-003 (A).

### **Complaint OC04-003 (B)**

#### **Alleged Violation of SDCL 49-7A-8 Location of underground facilities - Marking**

The Enforcement Committee found that there was probable cause that Wesley Johnson, dba Create-A-Scape Landscaping, had violated SDCL 49-7A-8 by failing to maintain a minimum horizontal clearance of 18 inches between the a marked underground facility and the cutting edge of any mechanical equipment.

The committee recommends a penalty of one-thousand dollars (\$1000.00) with six-hundred dollars (\$600.00) suspended on the basis that Wesley Johnson, dba Create-A-Scape Landscaping, fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-003 (B).



The findings and recommendation of the Enforcement Committee are summarized on the attached form.

Under SDCL 49-7A-27 either party may accept the recommendation of the Enforcement Committee or reject the recommendation of the Enforcement Committee by requesting a formal hearing on either or both of the violations alleged in this complaint. Your decision should be reflected on the third page of the attachment. **Please return the signed form prior to the close of business on June 18, 2004 to:**

South Dakota One Call Notification Board  
1012 N. Sycamore Avenue  
Sioux Falls, SD 57110-5747

If both parties accept this resolution, the South Dakota One Call Notification Board is required to accept the resolution and close this complaint. If either party rejects the Enforcement Committee resolution of either or both of the alleged violations, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve the allegation (s) alleged in the rejected complaint(s). Following this hearing, the Board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18 or SDCL 49-7A-19..

Pursuant to SDCL 15-6-55, failure to answer this Complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. **You are strongly urged to reply to this Notice in the time frame described above and to obtain the advise of counsel should you have any legal questions.**

Sincerely,

Larry L. Englerth  
Executive Director



Bob Sahr, Chair  
Gary Hanson, Vice-Chair  
Jim Burg, Commissioner

## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue  
Pierre, South Dakota 57501-5070  
[www.state.sd.us/puc](http://www.state.sd.us/puc)



Capitol Office  
(605) 773-3201  
(605) 773-3809 fax

Transportation/Warehouse  
(605) 773-5280  
(605) 773-3225 fax

Consumer Hotline  
1-800-332-1782

September 13, 2004

TO: Rapid Delivery

FROM: South Dakota Public Utilities Commission

RE: In the Matter of the Complaint filed by Montana-Dakota  
Utility Co. against Wesley Johnson - CreateAScape Landscaping,  
Rapid City South Dakota  
Docket OC04-003

Enclosed you will find a Notice of Hearing with reference to the above captioned matter. Would you please serve the Notice of Hearing upon Wesley Johnson whose address is 1323B Sydney Drive, Rapid City, South Dakota 57701. His cell number is 605-391-4141. The Executive Director of the One Call Board talked to him on his cell phone around 8:00 a.m. this morning and he thought he was at home at that time. The hearing is scheduled for September 15, 2004, so if at all possible we would appreciate it if you could get this served today.

Please send us your invoice for your services and we will promptly remit.

Could you please call me at 800-332-1782 once you have served this Notice on Mr. Johnson.

Thank you very much.

Very truly yours,

Delaine Kolbo  
Legal Secretary

Enc.